



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/170349

PRELIMINARY RECITALS

Pursuant to a petition filed November 27, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability/Office of Inspector General (OIG) in regard to Medical Assistance (MA), a telephonic hearing was held on February 18, 2016. The record was held open 10 days post-hearing to allow time for new information from petitioner to be submitted to the OIG for review and comment, and 5 days for petitioner's mother to respond, all of which occurred.

The issue for determination is whether the OIG correctly denied petitioner's prior authorization (PA) request because it did not support the medical necessity for the requested speech language therapy (SLT) services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: written submittal of [REDACTED], MA CCC SLP
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. At the time of the PA request he was 3 years old and certified as eligible for MA.
3. Petitioner is diagnosed with Autism and Apraxia.
4. On September 15, 2015 the petitioner's private Speech Language Therapist at Medical Support Services, Inc. submitted a PA request to the OIG for two weekly sessions of SLT for 26 weeks, to begin October 17, 2015.
5. On October 15, 2015 the OIG issued a notice to petitioner denying the PA request because it concluded that the SLT regimen requested was not sufficiently documented to be medically necessary under Wisconsin's MA rules.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, §DHS 107.18(2). In determining whether to approve such a therapy request, the OIG employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. Included in the definition of "medically necessary" at §DHS 101.03(96m) are the requirements that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. It is up to the provider to justify the provision of the service. See Wis. Admin. Code §DHS 107.02(3)(d)6.

Wis. Admin. Code §DHS 107.02(2)(b) states that the Division may reject payment for a service if the services are determined to be medically unnecessary, inappropriate, in excess of accepted standards of reasonableness or less costly alternative services, or of excessive frequency or duration. "Medically necessary" is a defined term at Wis. Admin. Code § DHS 101.03(96m).

"Medically necessary" means a medical assistance service under [Chapter DHS 107](#) that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with [s. DHS 107.035](#), is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;

7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code §DHS 101.03(96m).

To get additional SLT after the first 35 days, the person must show continued improvement in oral motor ability and/or communication. SLT extensions will be denied if: (1) “the recipient has shown no progress toward meeting or maintaining established and measurable treatment goals over a 6-month period,” and (4) “the recipient’s abilities are functional for the person’s present way of life.” Wis. Admin. Code §DHS 107.18(3)(e)1 and 4. It is up to the provider to justify the provision of the service. Wis. Admin. Code §DHS 107.02(3)(d)6.

When the OIG provided its summary for the hearing, it explained that it did not find the medical necessity of the requested services because the provider had not documented sufficient functional progress for sound production as a result of the private therapy, the provider had not documented coordination with petitioner’s school SLT, and that the provider had not established that private SLT was required in addition to the SLT at school. Specifically, the OIG stated, “while [REDACTED] clearly has speech and language delays, the question to be determined by the Wisconsin Medicaid (MA) program is not just whether deficits are present, but why the continued specific skill of a private SLP is required two sessions per week in addition to school SLP services provided given his current level of function in addition to limited progress over the years since beginning therapy at Medical Support Services.” The OIG’s position was that, as to progress, petitioner was vocalizing 2 syllable combinations and imitating non-speech sounds in 2013, and that in 2015 he was continuing to work on imitation of sound combinations and required maximum cueing to produce a CVC combination; this level of improvement did not support continued outpatient SLT twice weekly. In addition, school SLT is addressing improved language development, and any slight improvement in imitation of sound sequences might be the result of the school SLT where imitation is used as a learning strategy, not the outpatient SLT. Further, the coordination between the outpatient SLT and school does not explain why the school SLP cannot address imitation of speech sound coordination and imitation of speech sound combinations.

Petitioner’s mother and outpatient SLT appeared at hearing and provided additional information to show why they both support the need for the outpatient SLT. I agree that they have shown *some* progress in petitioner’s SLT goals, however, I agree that the progress is not shown to be attributable to the outpatient SLT. Additionally, while the outpatient SLT may benefit petitioner, if the requested service is not shown to be “medically necessary”, the MA program will not pay for it. Because federal law requires school districts to meet the special needs of its students with services like SLT, the Department will not allow a school district’s failure to comply with this obligation to provide the reason for funding another source of therapy, like outpatient SLT. It is therefore critical to show on a PA that requested private therapy does not duplicate school therapy and why the outpatient SLT is medically necessary, at the frequency requested, in addition to the school’s. This has not been done. The outpatient SLT argues that petitioner’s apraxia necessitates the service. Yet, there is nothing to show why the school cannot address those same deficits. While the petitioner’s parents’ efforts to achieve as much progress as possible in his speech and language skills are commendable, the petitioner has not established that the requested private SLT is medically necessary.

Based upon the preponderance of the evidence in this record, I can only conclude that the provider has not justified the services requested. The provider can always submit a new PA with adequate documentation.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The OIG correctly denied petitioner's PA request because it did not support the medical necessity for the requested SLT services.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

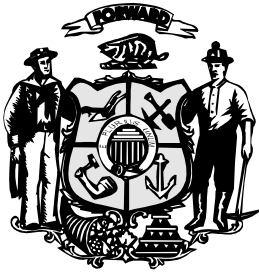
Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied. The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one). The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of March, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 21, 2016.

Division of Health Care Access and Accountability